

# HOUSE . . . . . No. 4460

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## The Commonwealth of Massachusetts

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By Mr. Wagner of Chicopee, for the committee on Transportation, on Senate, Nos. 1906 and 1984 and House, Nos. 3152, 3160, 3259, 3316, 3354, 3361, 4015 and 4029, a Bill relative to distracted driving (House, No. 4460). February 1, 2010.

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An Act relative to distracted driving.

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FOR THE COMMITTEE:

NAME:	DISTRICT/ADDRESS:
Joseph F. Wagner	8th Hampden

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

An Act relative to distracted driving.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Section 1 of chapter 90 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding the following definitions:-

“Mobile telephone”, a cellular, analog, wireless, satellite or digital telephone, including a telephone with two-way radio functionality, capable of sending or receiving telephone communications and with which a user initiates, terminates or engages in a call using at least one hand.

“Hands-free mobile telephone”, a hand-held mobile telephone that has an internal feature or function, or that is equipped with a hands-free accessory, whether or not permanently part of such hand-held mobile telephone, by which a user engages in a call without the use of either hand, whether or not the use of either hand is necessary to activate, deactivate or initiate a telephone call.

“Mobile electronic device”, any hand-held or other portable electronic equipment capable of providing data communication between two or more persons, including a text messaging device, a paging device, a personal digital assistant, a laptop computer, equipment that is capable of playing a video game or digital video disk, or equipment on which digital photographs are taken or transmitted, or any combination thereof, or equipment that is capable of visually receiving a television broadcast, but shall not include any audio equipment or any equipment installed in a motor vehicle for the purpose of providing navigation or emergency assistance to the operator of such motor vehicle or video entertainment to the passengers in the rear seats of such motor vehicle.

“Electronic message”, a self-contained piece of digital communication that is designed or intended to be transmitted between mobile electronic devices. “Electronic message” includes, but is not limited to electronic mail, a text message, an instant message, a command or request to access an internet site, or any message that includes a keystroke entry sent between mobile electronic devices.

SECTION 2. Section 8 of said chapter 90, as so appearing, is hereby amended by inserting after the sixth paragraph the following two paragraphs:-

No person under 18 years of age shall use a mobile telephone, a hands-free mobile telephone or a mobile electronic device while operating a motor vehicle on any public way. For the purposes of this paragraph, a junior operator shall not be considered to be operating a motor vehicle if the vehicle is stationary and not located in a part of the roadway intended for travel.

A junior operator who violates the preceding paragraph shall be punished by a fine of \$100 and shall have his license or permit suspended for 180 days for a first offense, by a fine of \$250 and shall have his license or permit suspended for 1 year days for a second offense, and by a fine of \$500 and shall have his license or permit suspended for 1 year for a third or subsequent offense. It shall be an affirmative defense for a junior operator to produce documentary or other evidence that the use of a mobile telephone that is the basis of the alleged violation was made for emergency purposes, including, but not limited to, an emergency call to a law enforcement agency, health care provider, fire department or other emergency services agency or entity.

SECTION 3. Section 13 of said chapter 90, as appearing in the 2008 Official Edition, is hereby amended by striking out, in line 6, the words "or mobile telephone".

SECTION 4 Chapter 90 of the General Laws is hereby amended by inserting after section 12 the following section:-

Section 12A. a) No operator of a vehicle or vessel used in public transportation, including a train, passenger bus, school bus or other vehicle used to transport pupils, taxi, passenger ferry boat, water shuttle or other equipment used in public transportation owned by, or operated under the authority of the Massachusetts Bay Transportation Authority, the Woods Hole, Martha's Vineyard & Nantucket Steamship Authority, Massachusetts Port Authority, or state transportation department, shall use a mobile telephone, hands-free mobile telephone or other mobile electronic device while operating such vehicle or vessel. Whoever violates this section shall be punished by a fine of \$500. A violation of the preceding sentence shall be a moving violation for purposes of the safe driver insurance plan under section 113B of chapter 175.

b) This section shall not apply to the following persons operating motor vehicles in the execution of their duties:

- (1) the driver of a fire-fighting vehicle;
- (2) the driver of a rescue vehicle or an ambulance; or
- (3) a state, county, or local public safety official, if operating the vehicle with due regard to the safety of others.

c) It shall be an affirmative defense for an operator under this section to produce documentary or other evidence that the use of a mobile telephone that is the basis of the alleged violation was made for emergency purposes, including, but not limited to, an emergency call to a law enforcement agency, health care provider, fire department or other emergency services agency or entity.

SECTION 5. Chapter 90 of the General Laws is hereby amended by inserting after section 13A the following section:-

Section 13B. a) No operator of a motor vehicle shall use a mobile telephone, mobile electronic device, or other device capable of accessing the internet to compose, send, or read an electronic message while operating such vehicle. For the purposes of this section, an operator shall not be considered to be operating a motor vehicle if the vehicle is stationary and not located in a part of the roadway intended for travel.

b) A violation of this section shall be punishable by a fine of \$100 for a first offense, by a fine of \$250 for a second offense and by a fine of \$500 for a third or subsequent offense. It shall be an affirmative defense for an operator to produce documentary or other evidence that the use of a mobile telephone or other mobile electronic device that is the basis of the alleged violation was made for emergency purposes, including, but not limited to, an emergency call to a law enforcement agency, health care provider, fire department or other emergency services agency or entity.

c) A violation of this section shall be considered a moving violation for purposes of the safe driver insurance plan under section 113B of chapter 175.

d) In addition to any other provision or penalty of law, whoever violates this section or section 12a and is found to be in an at-fault accident as a proximate result of using a mobile telephone or mobile electronic device for electronic messaging while operating a moving motor vehicle shall be considered to have operated the motor vehicle in a reckless manner and shall be subject to the provisions and penalties in subsections (2a) of section 24 of chapter 90 of the General Laws.

SECTION 6. The registrar of motor vehicles, in cooperation with the governor's highway safety bureau, shall develop and implement a public awareness campaign for both junior and adult drivers which shall include, but not be limited to, the dangers and consequences of distracted driving, information on the restrictions of mobile telephone and mobile electronic device use while operating a motor vehicle under section 8 and section 13B of chapter 90 of the General Laws, and information on the fines and punishments which may be imposed for violations of said chapter 90. Said campaign shall commence no later than July 1, 2010.